

1. I am the president and sole shareholder of All Around Spiral, Inc. (hereinafter “AAS” or “All Around”).
2. I have personal knowledge of the facts set forth herein, and I would be competent to testify as to these facts if called as a witness in the trial of this matter. This declaration is submitted in opposition to the Board of Trustees, Sheet Metal Workers’ National Pension Fund’s (hereinafter “Fund”) motion for summary judgment.
3. At all relevant times until Richard Kern’s Chapter 7 bankruptcy, Richard Kern owned 70% of Cool Sheetmetal and 100% of All Around Spiral, Inc.
4. On June 16, 2014, the Honorable Alan S. Trust, United States Bankruptcy Judge in Richard Kern’s bankruptcy proceeding entered an Order Approving Sale of the Debtor’s Assets.

5. Pursuant to that Order, I purchased from the bankruptcy trustee – among other things – Richard Kern’s 70% interest in Cool Sheetmetal and 100% interest in All Around Spiral free and clear of all liens claims and encumbrances and security interests of record of whatever kind or nature.
6. To the best of my knowledge, Thomas Rammelkamp still owns 30% of Cool Sheetmetal.
7. I have reviewed the Fund’s motion for summary judgment including all declarations in support and the accompanying exhibits.
8. When reviewing Exhibit 3 of the Declaration of Cari Greene, I noted that the collective bargaining agreement covered manufacturing work.
9. When reviewing Exhibit 2 of the Declaration of Cari Greene, I noted that Ms. Greene’s sworn statement that Cool Sheetmetal was a signatory to and bound by a collective bargaining agreement with Local Union No. 28 was unsupported by the document because the document was a long-expired memorandum of understanding dated August 1, 1996.
10. Cool Sheetmetal’s collective bargaining agreement was different from All Around Spiral’s. All Around Spiral’s collective bargaining agreement covered different employees and different work.
11. The employees of Cool Sheetmetal performed manufacturing and installation of square and rectangular sheet metal products.
12. These products were only allowed to be manufactured and sold to other sheet metal companies who were signatories to collective bargaining agreements with Local 28 and affiliated sheet metal locals.

13. All Around Spiral was also a signatory to a collective bargaining agreement with Local

28. However, All Around Spiral's collective bargaining agreement covered different employees performing different work for different customers, including non-union customers.

14. The collective bargaining agreement that AAS executed with Local 28 on February 1, 2008 was not for the manufacturing and installation of square or rectangle sheet metal products, but covered solely spiral and oval sheet metal products.

15. Although both Cool Sheetmetal and All Around Spiral operated in the same facility, separate equipment was used by both companies.

16. All Around Spiral's collective bargaining agreement's wage schedule and terms and conditions of employment were substantially different from the provisions in Cool Sheetmetal's collective bargaining agreement.

17. All Around Spiral attempted to contribute to the Fund under its own collective bargaining agreement as it was obligated to do so for all covered employees performing covered work.

18. All Around Spiral and Cool Sheetmetal operated concurrently with each other, and Cool Sheetmetal was a customer of All Around Spiral.

19. When Cool Sheetmetal had a customer that needed spiral and oval ductwork, Cool Sheetmetal would contract with All Around to fulfill that order.

20. Conversely, if All Around Spiral had a customer that requested installation of square and rectangular ductwork, Cool Sheetmetal was contracted to perform such services.

21. All Around Spiral loaned Cool Sheetmetal funds.

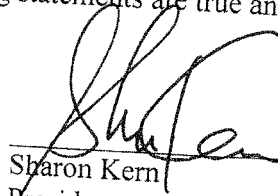
22. Cool Sheetmetal and All Around Spiral operated in segregated parts of the facility, and performed different work with different machinery.
23. Jillian Guido was an estimating assistant at All Around Spiral.
24. While Ashley Kern was a bookkeeper who exercised managerial discretion at All Around Spiral, she did not hold a bookkeeper position at Cool Sheetmetal, and she did not exercise any managerial discretion at Cool Sheetmetal.
25. After I became President of All Around, Richard Kern's primary duties were consulting and estimating.
26. After I became President of All Around, I continued performing estimating work.
27. As President of All Around, I relied on Richard Kern's expertise for purchasing equipment.
28. At my deposition on June 12, 2015, I became nervous and consequently was unable to recall certain answers to questions asked of me regarding All Around Spiral's operations.
29. After Cool Sheetmetal ceased operations, only a fraction of its former employees began to work for All Around Spiral and a substantially larger number of Cool Sheetmetal's former employees never worked at All Around Spiral.
30. The sheet metal industry overall has substantial overlap with customers and vendors. It is not uncommon for a customer to work with several vendors, especially those that offer particular products, i.e., square and oval duct work. Also, All Around Spiral entered into a manufacturing agreement with Local 28 to solely sell spiral and oval sheet metal products.
31. To the best of my recollection, the eight customers listed in Plaintiff's papers were for jobs requiring spiral and oval ductwork and are, in fact, customers of Cool Sheetmetal.

32. All Around Spiral, Inc. was formed in or about December 2006.

33. Cool Sheetmetal, Inc. was formed in or about February 1985.

I declare under penalty of perjury that the foregoing statements are true and correct:

Executed on: 8-17-15

  
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Sharon Kern  
President  
All Around Spiral, Inc.